

EX PARTE OR LATE FILED

CARTER, LEDYARD & MILBURN

COUNSELLORS AT LAW

1350 I STREET, N. W.

SUITE 870

WASHINGTON, D. C. 20005

2 WALL STREET
NEW YORK, N. Y. 10005
(212) 732-3200

(202) 898-1515

FAX: (202) 898-1521

DOCKET FILE COPY ORIGINAL

114 WEST 47TH STREET
NEW YORK, N. Y. 10036
(212) 944-7711

April 19, 1995

BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RECEIVED
APR 19 1995
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: MM Docket No. 92-266 -- Ex Parte Presentation

Dear Mr. Caton:

This is to provide notice, pursuant to Section 1.1206 of the Commission's Rules, that A. Jay Finegold, Vice President of Government Relations, Affiliated Regional Communications, Ltd. ("ARC"), James A. Martin, President of Network Operations, Liberty Sports, and the undersigned, as counsel for ARC and Liberty Sports, met today with Thomas Power, Senior Staff Attorney, Cable Services Bureau, to discuss commercial rate regulation issues raised in the comments and reply comments filed by ARC in this proceeding on June 29 and July 29, 1994. In addition to reviewing ARC's comments and reply comments, we discussed and provided copies of the enclosures to each of the above.

If you have any questions regarding this matter, please contact me.

Very truly yours,

Robert Hoegle
Robert L. Hoegle

RLH:ssm
Enclosures
cc: Thomas Power, Esquire (w/encl.)

No. of Copies rec'd 041
List A B C D E

COMMERCIAL RATE REGULATION PROPOSAL

(April 18, 1995)

- I. The Continuing Uncertainty Created By The Commission's Proposal Is Injuring Regional Sports Networks.
 - A. In its 3/30/94 Order at ¶185, the Commission declined to "adopt regulations permitting special commercial rates at this time...."
 - B. ARC has entered into multi-year rights agreements with sports leagues and teams with rights fees premised on higher commercial rates.
 - C. Uncertainty arising from the Commission's Order has impeded the development and threatened the very existence of ARC's commercial rate programs.
 1. Such uncertainty has been particularly problematic generally for affiliation agreement renewals and new customers.
 2. The Commission's proposal has impaired not only ARC's agreements with cable operators, but also its direct sales programs to commercial entities. See ARC Comments at 4 n.2.
- II. Higher Commercial Rates Have Been Fully Justified In The Record.
 - A. Different and higher commercial rates are a long-established commercial practice and do not constitute a response to the regulation of rates to residential customers.
 - B. ARC pays higher license fees for the right to distribute programming to commercial establishments.
 1. As the Commission recognized in its study of sports migration, professional sports teams have a significant interest in protecting the "gate" for their home games, which generally constitute the majority of games licensed to regional sports networks. See Sports Migration Final Report at ¶158-159; NHL Comments at 9.
 2. Consequently, early rights agreements prohibited distribution of licensed games to commercial entities.

3. As teams and leagues permitted distribution to commercial establishments, the rights agreements expressly required ARC to charge higher rates to commercial entities, allowed the teams to share in commercial license fees and/or substantially increased general rights fees. ARC Comments at 5; NHL Comments at 9.
- C. Commercial subscribers receive added value from ARC's service, particularly its coverage of local professional sports events.
1. Sports bars advertise televised events to "draw" customers.
 2. Commercial establishment effectively "gives away" programming to increase revenues from sale of food, beverage or services -- one bar owner indicated that televised Boston Red Sox baseball games can increase bar revenues by \$200 to \$300 per night. Cablevision Systems Comments at 6 n.10.
- D. Commercial establishments allow large numbers of persons to view ARC's service without subscribing to it -- higher commercial rates permit ARC to recoup a portion of lost revenues.
- E. Higher commercial rates are consistent with other commercial licensing arrangements.
1. Long-standing copyright law distinguishes between "private" and "for profit" performances or displays of copyrighted works -- the Copyright Act recognizes that commercial establishments using licensed works to further their for-profit operations receive significantly greater benefits than residential customers.
 2. ASCAP and BMI license fees are based on the seating capacity of commercial establishments.
- F. Professional leagues and programming services charge higher commercial rates regardless of the distribution medium, and such rates are reflected in the retail rates of all media.
1. The commercial rates for the NFL's "Sunday Ticket" service are based on fire code occupancy figures and range from \$399 to \$29,999 per season. When the Commission reviewed this package, which is

delivered by satellite and unavailable over cable television, it concluded that it had "no basis to question the announced price structure of the package." Sports Migration Final Report at ¶171.

2. DirecTV similarly charges higher commercial rates for the ESPN, TNT and Golf Channel services, ARC's regional services, and non-sports programming services.
3. HSD packagers and MMDS, SMATV and DBS operators all charge higher commercial rates.

III. There Is No Statutory Or Empirical Basis For Regulating Commercial Rates In Any Event.

- A. The Cable Act does not require the Commission to regulate commercial rates.
- B. There is effective competition to cable in serving commercial entities.
 1. Cable operators provided data reporting substantial competition from alternative distribution technologies.
 2. Clearly, the Ku-Band service provided by DirecTV and PrimeStar and the C-Band service provided by numerous HSD packagers provide nationwide effective competition for commercial customers.
- C. The Commission has no data on which to base commercial rate regulations.

HOW TO ORDER NFL SUNDAY TICKET

Depending on the type of satellite equipment you will be utilizing (C-Band or DSS), you may purchase NFL SUNDAY TICKET through several authorized national distributors. The rate for your business, regardless of which distributor you choose, will be based on the official fire occupancy code as stated by the local governing authority in your area. For complete information and a 1995 NFL SUNDAY TICKET License Agreement, contact one of the following distributors or call NFL Enterprises directly.

NFL SUNDAY TICKET COMMERCIAL ESTABLISHMENT 1995 RATE CARD			
<u>FIRE OCCUPANCY</u> <u>Code</u>	<u>LICENSE FEE</u>	<u>PER OCCUPANT COST PER WEEK</u>	
		<u>LOW FOC</u>	<u>HIGH FOC</u>
0-50	\$ 399	N/A	\$0.46
51-100	\$ 699	\$0.80	\$0.41
101-200	\$ 1,299	\$0.75	\$0.38
201-500	\$ 1,899	\$0.55	\$0.22
501-1,000	\$ 3,499	\$0.41	\$0.20
1,001-2,000	\$ 6,699	\$0.39	\$0.19
2,001-5,000	\$12,999	\$0.38	\$0.15
5,001-10,000	\$24,999	\$0.29	\$0.14
10,001+	\$29,999	\$0.17	N/A

NFL ENTERPRISES

410 PARK AVENUE

NEW YORK, NY 10022

TELEPHONE: 212-758-1500 (EXT. 183)

FAX: 212-872-7499

Authorized national
NFL SUNDAY TICKET distributors:

TURNER HOME SATELLITE

1-800-521-6728

ESPN

1-800-494-ESPN (3776)

DIRECTV

1-800-637-4DTV (4388)



SUNDAY
TICKET

PROGRAMMING AND PRICING

NFL SUNDAY TICKET

Up to 200 regular season pro football games each shown in its entirety and all in crisp digital quality! Now your customers can watch their favorite teams battle it out on the gridiron.

Firecode	1995
Occupancy Limit	Season Price
0 to 50	\$399
51 to 100	\$699
101 to 200	\$1,299
201 to 600	\$1,899
601 to 2,000	\$2,499
2,001 to 5,000	\$12,999
5,001 to 10,000	\$24,999
10,000+	\$29,999

ESPN/ESPN2 \$599 per year

Get two 24 hour channels of sports from the leader in cable sports coverage.

TNT

Turner Network Television's award-winning network, with sports, entertainment and more all year round.

Firecode	Price Per Year
Occupancy Limit	
0 to 50	\$175
51 to 200	\$200
201+	\$225

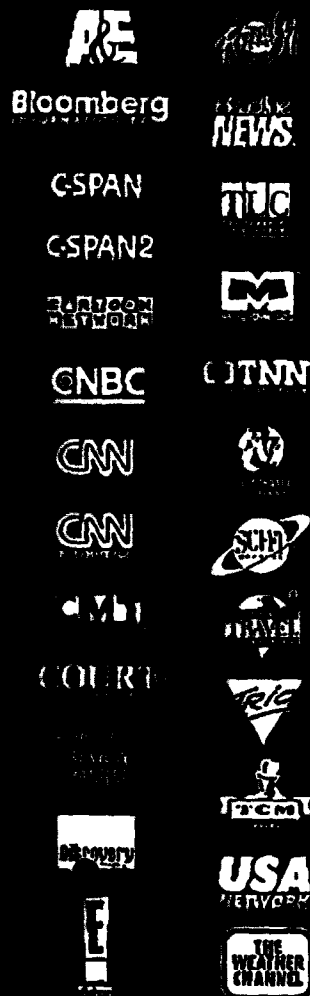
THE GOLF CHANNEL \$299 per year

The only 24 hour channel dedicated to golf. Get live coverage of PGA, LPGA and NIKE TOUR events, and international tournaments from Asia, Europe, South Africa and Australia. Plus the latest in golf news, video trips to the world's greatest golf courses, and more!

MUSIC CHOICE \$399 per year

Enjoy the clarity of digital audio with these 28 channels of music. Presented in a variety of formats from Jazz to Rock to Country.

Get these great entertainment networks all delivered in digital quality picture and sound.



Firecode	Occupancy Limit	Price Per Year
0 to 100		\$499
101 to 200		\$699
201 to 600		\$899
601 to 2,000		\$1,099

EQUIPMENT AND INSTALLATION

All you need to get the best in television entertainment is the affordable DSS receiving equipment: One 18-inch dish, a set-top receiver and a universal remote control. There's no moving antenna, no hassle, and no need to invest in several big C-band satellite antennas.

Your tiny 18-inch dish can easily be professionally installed at any south-facing portion of your establishment, such as a window sill or roof line. Multiple receivers - and thus multiple televisions - can all be connected to the same 18-inch dish. Each of your DSS receivers will be authorized to receive your selected programming at no extra cost, as long as each unit is connected to the same phone line.

To experience DIRECTV and the DSS for yourself, visit your local RCA or Satellite TV dealer today! Or call 1-800-226-4DTV (1-800-226-4388) for more information.

**DIRECTV. IT'S PERSONALIZED TV.
FOR YOUR BUSINESS.**



Additional sports and entertainment programming will become available throughout 1995.